IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1306 OF 2004

Satyawan Narayan Satam & Ors. .. Appellants

Versus

Mrs.Rama Vasant Rane & Ors. .. Respondents

Mr.A.S.Khandeparkar i/b M/s.Khandeparkar & Associates for appellants

Mr.S.M.Railkar for respondent Nos.1 to 3 and 5

CORAM : P.V.KAKADE, J.

DATE : 20TH JUNE, 2005.

P.C.:

1. This is an appeal filed by the appellants against the judgment and order passed by District Judge, Sindhudurg dated 11.8.2004 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Kankavali dated 20.7.2001 decreeing the

plaintiff's suit for partition and consequential reliefs.

2. The plaintiff came with the suit for partition of the suit property on the basis of earlier transaction of sale deed dated 9.8.1946. The defendants challenged the suit on the basis of subsequent sale transaction and also on the ground that the plaintiff had no right, title and interest in the suit property by virtue of the said sale deed and on such and other grounds the suit was sought to be dismissed.

3. The learned trial judge adjudicated the dispute after hearing both the parties and came to the conclusion that the plaintiff had proved that the suit property was ancestral joint family properties of her and defendants, and therefore, she was entitled to partition and possession. It was also held that the defendant nos.4 to 7 failed to prove that deceased Narayan Satam had purchased the properties by virtue of sale deed dated 28.9.1946 and they were sole owners, as contended, of the said properties and as such suit came to be decreed.

. The appeal was carried to the District Court, Sindhudurga. The learned District Judge after hearing both the parties confirmed the findings of the lower court and dismissed the appeal. Hence the present appeal.

4. I have heard the learned counsel for both the parties. Perused the record.

5. At the outset it may be noted that the entire issues involved in the dispute are the issues of facts and no substantial question of law is involved. The learned counsel for the appellants sought to submit that even though the plaintiff had stressed her claim on the basis of sale deed of August 1946, both the courts below had proceeded to adjudicate the dispute on the basis of assumption that the property was ancestral property of the parties which was not allowed in law. For that purpose it was sought to canvass that the burden to prove this aspect was shifted on the plaintiff and it was not discharged and as such the entire appreciation of the factual evidence by both the courts below was erroneous.

. However, on perusal of the judgment of both the courts below I come to the conclusion that the lower appellate court has considered the rights of the plaintiff not only on the basis of sale deed (Exh.52) but also on the principles of Hindu Law, which are found to be correctly applied and therefore, there is no error in application of available evidence nor there is any mistake in application of relevant legal provisions.

6. It must also be noted that the concurrent findings of fact howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of C.P.C. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. In the present case before us, both the courts below appear to have correctly appreciated the evidence on record as well as the legal provision and therefore, I hold that there is no merit in the appeal.

7. In the result the appeal stands dismissed. Consequently the Civil Application No.1743 of 2004 also stands dismissed.

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